REPORTABLE

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Writ Petition (C) Nos. 8899-8906 of 2006

Date of Decision :October 12, 2007

Savita Bhatnagar & Ors. ..... Petitioners

through Mr. VSR Krishna, Advocate

Versus

Union of India & Ors. .....Respondents

through Mr. Alakh Kumar , Advocate for respondent No.1

Mr.V.K.Rao Advocate with Mr.Saket Sikri, Advocate for respondents 3 - 28.

CORAM:
HON'BLE MISS JUSTICE REKHA SHARMA

1. Whether the reporters of local papers may be allowed to see the judgment ? YES

2. To be referred to the reporter or not ? YES

3. Whether the judgment should be reported in the `Digest?' YES

REKHA SHARMA, J.

The petitioners are erstwhile employees of the Department of Telecommunication (DOT) and presently of Mahanagar Telephone Nigam Limited (MTNL). They joined the DOT on various dates

between July 1986 to November 1993 as Group D stenographers after qualifying the examination conducted by the Staff Selection Commission.

It so happened that the Government of India took a decision to corporatise the telecommunication network in the country and consequently two companies, namely, Mahanagar Telephone Nigam Limited (MTNL) and Bharat Sanchar Nigam Limited (BSNL) came into existence w.e.f October 1, 2000. On bifurcation of DOT, officials were allotted to BSNL initially on 'as is where is basis', and were treated on 'deemed deputation'. The process of permanent absorption of DOT employees in BSNL was undertaken sometime between August- September 2001 by calling options from various categories of Central Secretariat Staff borne on the cadres of DOT including Grade D Stenographers. The petitioners are those Grade D Stenographers who opted for absorption in BSNL. Their options were accepted and they were placed at the disposal of BSNL w.e.f January 1, 2002 while the absorption was given effect from January 1, 2000 the day the BSNL had come into existence.

The next promotion for a Grade D Stenographer is to the post of Personal Assistant or Grade C Stenographer. On July 4, 2003 the BSNL framed and published Recruitment Rules for appointment/ promotion to the post of Personal Assistants together with that of other Secretarial cadre. The said Rules provide that appointment to

the post of Personal Assistant shall be 50% by promotion from Grade D Stenographer with 5 years regular service in the grade on the basis of 'limited internal competitive examination.' Pursuant thereto, on February 23, 2006, a notification was issued proposing to hold the aforesaid examination for promotion to the posts of Personal Assistants.

The facts noticed above are not in dispute.

The dispute starts with the issuance of notification of February 23,2006 inviting applications from Grade D stenographers to take the examination in terms of the Recruitment Rules for promotion to the post of Personal Assistants. The notification is unacceptable to the petitioners. They say it does not apply to them and they cannot be subjected to the rigours of a 'limited internal competitive examination'. According to them at the time of their absorption in BSNL they were given to understand, rather assured, that their promotion to the next grade would be made on the same criteria as was applicable to them when they were working in DOT. They further say that it was on the basis of such assurance that they opted for absorption in BSNL. Therefore they contend that BSNL cannot go back from its assurance and change the criteria of promotion which when they were in DOT was 'seniority-cum-fitness' to the holding of a 'limited internal competitive examination.'

It is further the case of the petitioners that the DOT vide its

letter dated January 8, 2002 transferred 96 posts of Personal Assistants to BSNL w.e.f. October 1, 2000 out of which only 69 were absorbed on permanent absorption basis. The remaining 27 vacancies were thus available to be filled by promotion from Grade D Stenographers. The submission is that these 27 vacancies which were in existence prior to the coming into force of the Recruitment Rules on July 4 2003 can only be filled on the basis of assurance given to the petitioners at the time of their absorption in BSNL on the criteria of 'seniority-cum- fitness'.

The petitioners also complain of unequal treatment vis-a-vis 21 Stenographers. It is stated that the said stenographers while they were in DOT were working as Personal Assistants on adhoc basis. On their absorption in BSNL they have been regularized as Personal Assistants without subjecting them to any test while the petitioners are being asked to take the 'limited internal competitive examination'. This dual policy of the BSNL, it is alleged is discriminatory.

On the basis of the above facts and submissions the petitioners have preferred the present writ petitions seeking quashing of notification dated February 23, 2006 in so far as it proposes to conduct examination for promotion to Grade C Stenographer and also a direction to the respondent, BSNL to fill up the promotional vacancies of Grade C Stenographers on the basis of

'seniority-cum-fitness.'

The question whether the petitioners are liable to be promoted as Personal Assistants/ Stenographer Grade C on the basis of 'seniority-cum- fitness' which was the criteria in existence when they were working in DOT has not arisen before this Court for the first time. A similar issue has already been dealt with in a judgment delivered on March 3, 2006 in writ petition No. 22094-22120/2005 titled Nagendu Bhattacharya Vs. BSNL & Anr. The petitioners in the said writ petition were Upper Division Clerks in the Department of Telecommunication and like the present petitioners they too were absorbed in BSNL and in their case also the same set of Rules providing for 'limited internal competitive examination' for promotion to next rank which in their case was to the posts of Assistant were framed and notified in 2003. They also raised the similar plea that they were entitled to be promoted to the next grade of Assistant on the basis of seniority-cum-fitness and not on the basis of “limited internal competitive examination”. They too contended that they were assured that the Rules which applied to them before their absorption in BSNL would continue to govern them for the purpose of their promotion to the next higher grade and that the employer would not change such Rules to their disadvantage.

After noticing a number of judgments of the Supreme Court

such as State of Maharashtra Vs. Chandrakant Anant Kulkarni 1981(4) SCC 130; All India State Bank Officers Federation Vs. UOI (1997) 9 SCC 151; P.U.Joshi Vs.Accountant General (2003) 2 SCC 632 and State of J&K Vs. Shiv Ram Sharma (1999) 3 SCC 653 it was held by a learned Single Judge of this court that reduction in the chances of promotion by itself does not constitute an actionable wrong warranting intervention of the Court in judicial review. It was further held that the mere fact that the petitioners were given some assurance about continuation of their service conditions could not fetter the power of the BSNL to bonafide formulate a new recruitment policy and that if such restrictions were to be read into what is in exclusive executive domain, the Courts would be placing unwarranted impediments upon administrative functioning. The decision so rendered by the learned Single Judge was taken in appeal before the Division Bench in LPA Nos.626-49/2006 . The Division Bench by its judgment dated May 15,2006 endorsed the view taken by the learned Single Judge.

The case of the petitioners is no different from the Upper Division Clerks as they too were being subjected to 'limited internal competitive examination' and they also claimed that they were given assurance that the criteria of promotion of 'seniority-cum -fitness' which was in existence when they were employees of DOT would be continued. I find myself in full accord with the reasoning

and conclusion of the learned Single Judge in the case of Nagendu Bhattacharya (Supra). Therefore, I adopt the same. The added reason why I must necessarily follow the said judgment is the approval accorded to it by the Division Bench of this Court. Therefore, in so far as this Court is concerned the issue is no longer res-integra. However, before I proceed to deal with the next submission I must refer to the 'Option Forms' filled up by petitioners copies of which have been annexed as Annexure R-V alongwith counter-affidavit to the writ petition. All the Forms bear the signatures of each of the petitioners and are identically worded. In paragraph 1 of the Form it is stated that " I hereby agree to be absorbed in BSNL on 1.10. 2000" and in paragraph 3 it is stated, " I understand that on absorption in BSNL I shall be governed by the Rules and Regulations of BSNL." Where is that assurance which the petitioners are talking about? The above Forms prove to be their nemesis. The said Forms strike at the very foundation of the submission that they were given an assurance that on absorption in BSNL they would be governed by the Rules and Regulations as were applicable to them in DOT. Rather the Forms go to show that the petitioners agreed to be governed by the Rules and Regulations of BSNL.

This brings me to the contention of the petitioners that the DOT vide its letter dated January 8, 2002 had transferred 96 posts of

Personal Assistants to the BSNL w.e.f. October 1,2000 out of which only 69 were absorbed on permanent basis leaving 27 vacancies which, it is submitted, the BSNL was supposed to fill up by promotion on the basis of 'seniority-cum-fitness' as they arose much prior to the coming into force of the Recruitment Rules . The BSNL in its counter affidavit to the writ petition has disputed this fact . As per the BSNL, the cadre of Personal Assistants actually came under its administrative control on completion of exercise regarding the absorption of Group B BSNL optees by transfer of the services of Personal Assistants and other Group B Secretariat Cadre from DOT to BSNL we.f. March 24,2004 (afternoon). Prior to this date the Personal Assistants and other Group B cadre Central Secretariat posts were centrally controlled and managed by the DOT. Therefore, it is further stated in the counter affidavit that in so far as the BSNL is concerned any action to make recruitment/ promotion in the grade of Personal Assistant in BSNL could be undertaken only on or after March 24,2004 in terms of the Recruitment Rules notified by BSNL on July 4,2003. To substantiate the averment the BSNL has placed on record a communication dated March 22, 2004 as annexure R1 to the counter affidavit . A perusal of the same shows that as many as 105 employees were working either in DOT or BSNL as Private Secretaries, Personal Assistants or Stenographer Grade D but the services of all those 105 employees were actually placed at

the disposal of BSNL on permanent absorption basis w.e.f March 24, 2004. This being so the BSNL is fully justified in taking the position that it could not undertake any exercise for promotion to the posts of Personal Assistants till such time the absorption in the BSNL of the employees working against those posts had actually taken place, which as noticed above, happened on March 24,2004. Soon thereafter, on July 4, 2003 the Recruitment Rules had come into existence in terms of which the notification for holding the 'limited internal competitive examination' was issued. The petitioners have placed reliance upon a decision of the Apex Court in Y.V.Rangaiah & Ors Vs.J.Sreenivasa Rao and Ors. 1983 (3) SCC 284 and on the strength of the same have contended that the vacancies which existed prior to the coming into force of the new Rules could only be filled up in terms of the old Rules. The judgment in Rangaiah case was also relied upon in the case before the Single Judge in Nagendu Case (Supra). It was held by this Court with which I am in agreement that in Rangaiah's case there was an obligation on the part of the authorities to prepare promotion panel in time as per the Rules then in force, whereas, in the case before the learned Single Judge or before me nothing has been shown that there was any obligation to prepare periodical panels. In any case this court in Nagendu's case (Supra) relied upon a later judgment of the Supreme Court rendered in Delhi Judicial Services Association Vs. Delhi High Court 2001(5)

SCC 145 where it has been held that where the process of selection not having been started and even the advertisement itself not having been issued the contention that posts had to be filled up under the pre-amended rules, merely because the posts were created when the amended rules had not come into force, could not be countenanced. Admittedly, in the present case too no process of recruitment was initiated prior to the coming into force of the Rules.

Now the last submission. The petitioners say that the BSNL has regularized 21 Grade D stenographers as Personal Assistants/ Grade C Stenographers without subjecting them to 'limited internal competitive examination.' The BSNL refutes the charge of discrimination. It says that all the 21 Personal Assistants referred to by the petitioners had already been given promotion to the Grade of Personal Assistants on adhoc basis by DOT prior to their transfer to the BSNL for their absorption therein. It further says that on their absorption in BSNL their substantive posts of Stenographers Grade D were upgraded to the grade of Personal Assistant by the BSNL so that they could continue to function as Personal Assistants on adhoc basis and draw the pay of the posts. They were subsequently regularized in the Grade of Personal Assistants consequent upon the approval given by the Management Committee of the Board of Directors of BSNL. It may be noted that the petitioners filed no rejoinder controverting the factual position as stated by the BSNL.

Therefore, if the very posts against which 21 Grade-D Stenographers were promoted as Personal Assistants were upgraded and if, as stated by the BSNL, they were working as Personal Assistants even though on adhoc basis prior to their absorption in the BSNL their case cannot be equated with that of the petitioners. They fall in a category different from the petitioners and form a class apart. In any case the petitioners have not made any one of the 21 stenographers as party in the writ petition nor have they sought quashing of their such appointments.

The petitioners have without prejudice to their right in the writ petition taken the 'limited internal competitive examination' but because of the order passed by this Court on May 22,2006 restraining the BSNL from declaring the results it has been kept under wraps. Besides the petitioners there are others also who have taken the examination. Why should they be deprived of their results? Test has been held to test merit. Merit has to prevail. The petitioners may be senior in service. More experienced too. Let them come out of the ordeal of the test too. Why shy away from it?

The writ petitions are dismissed. The stay against the BSNL from declaring the result is lifted.

REKHA SHARMA,J.

October 12, 2007
g